

that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the Department and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the Secretary in accordance with § 35.39 of this part.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the Department and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the Secretary in accordance with § 35.39 of this part.

#### **§ 35.39 Appeal to the Secretary of the Interior.**

(a) Any defendant who as filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the Secretary by filing a notice of appeal with the Director in accordance with this section.

(b)(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if another party files a motion for reconsideration under § 35.38 of this part, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(3) The Director may extend the initial 30 day period for an additional 30 days if the defendant files with the Director a request for an extension within the initial 30 day period and shows good cause.

(c) If the defendant files a timely notice of appeal with the Director and the time for filing motions for reconsideration under § 35.38 of this part has expired, the ALJ shall forward the record of the proceeding to the Director.

(d) A notice of appeal shall be accompanied by a written brief specifying ex-

ceptions to the initial decision and reasons supporting the exceptions.

(e) The representative for the Government may file a brief in opposition to exceptions within 30 days of receiving the notice of appeal and accompanying brief.

(f) There is no right to appear personally before the Director.

(g) There is no right to appeal any interlocutory ruling by the ALJ.

(h) In reviewing the initial decision, the Director shall not consider any objection that was not raised before the ALJ unless a demonstration is made of extraordinary circumstances causing the failure to raise the objection.

(i) If any party demonstrates to the satisfaction of the Director that additional evidence not presented at such hearing is material and that there were reasonable grounds for the failure to present such evidence at such hearing, the Director shall remand the matter to the ALJ for consideration of such additional evidence.

(j) The Director may affirm, reduce, reverse, compromise, remand, or settle any penalty or assessment determined by the ALJ in any initial decision.

(k) The Director shall promptly serve each party to the appeal with a copy of the Department's decision and a statement describing the right of any person determined to be liable for a civil penalty or assessment to seek judicial review.

(l) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a defendant has exhausted all administrative remedies under this part and within 60 days after the date on which the Director serves the defendant with a copy of the Department's decision, a determination that a defendant is liable under § 35.33 of this part is final and is not subject to judicial review.

#### **§ 35.40 Stays ordered by the Department of Justice.**

If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the Secretary a written finding that continuation of the administrative process described in this part with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to

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such claim or statement, the Secretary shall stay the process immediately. The Secretary may order the process resumed only upon receipt of the written authorization of the Attorney General.

#### **§ 35.41 Stay pending appeal.**

(a) An initial decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the Secretary.

(b) No administrative stay is available following a final decision of the Secretary.

#### **§ 35.42 Judicial review.**

Section 3805 of title 31, U.S. Code, authorizes judicial review by an appropriate U.S. District Court of a final decision of the Secretary imposing penalties or assessments under this part and specifies the procedures for such review.

#### **§ 35.43 Collection of civil penalties and assessments.**

Sections 3806 and 3808(b) of title 31, U.S. Code, authorize actions for collection of civil penalties and assessments imposed under this part and specify the procedures for such actions.

#### **§ 35.44 Right to administrative offset.**

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under § 35.42 or § 35.43, or any amount agreed upon in a compromise or settlement under § 35.46 of this part, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this section against a refund of an overpayment of Federal taxes, then or later owing by the United States to the defendant.

#### **§ 35.45 Deposit in Treasury of United States.**

All amounts collected pursuant to this part shall be deposited as miscellaneous receipts in the Treasury of the United States, except as provided in 31 U.S.C. 3806(g).

#### **§ 35.46 Compromise or settlement.**

(a) Parties may make offers of compromise or settlement at any time.

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(b) The reviewing official has the exclusive authority to compromise or settle a case under this part at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues an initial decision.

(c) The Secretary has exclusive authority to compromise or settle a case under this part at any time after the date on which the ALJ issues an initial decision, except during the pendency of any review under § 35.42 or during the pendency of any action to collect penalties and assessments under § 35.43 of this part.

(d) The Attorney General has exclusive authority to compromise or settle a case under this part during the pendency of any review under § 35.42 of this part or of any action to recover penalties and assessments under 31 U.S.C. 3806.

(e) The investigating official may recommend settlement terms to the reviewing official, the Secretary, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the Secretary, or the Attorney General, as appropriate.

(f) Any compromise or settlement must be in writing.

#### **§ 35.47 Limitations.**

(a) The notice of hearing with respect to a claim or statement must be served in the manner specified in § 35.8 of this part within 6 years after the date on which such claim or statement is made.

(b) If the defendant fails to file a timely answer, service of a notice under § 35.10(b) of this part shall be deemed a notice of hearing for purposes of this section.

(c) The statute of limitations may be extended by agreement of the parties.

### **PART 36—TRANSPORTATION AND UTILITY SYSTEMS IN AND ACROSS, AND ACCESS INTO, CONSERVATION SYSTEM UNITS IN ALASKA**

Sec.

36.1 Applicability and scope.

36.2 Definitions.

36.3 Preapplication.

36.4 Filing of application.